

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,) CR 05-00191 JMS
4)
5 Plaintiff,) Honolulu, Hawaii
6 vs.) September 26, 2005
7 JOSHUA KNEPPER,) 9:00 a.m.
8 Defendant.) Defendant's Motion
) to Suppress Evidence
)

9 TRANSCRIPT OF PROCEEDINGS
10 BEFORE THE HONORABLE J. MICHAEL SEABRIGHT
UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

SCANNED

1 I N D E X

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1 MONDAY, SEPTEMBER 26, 2005 9:00 A.M.

2 COURTROOM MANAGER: Criminal No. 05-00191 JMS, United
3 States of America versus Joshua Knepper.

4 This case is called for a hearing on defendant's
09:15AM 5 motion to suppress evidence.

6 MS. SHEEHAN: Good morning, Your Honor. Loretta
7 Sheehan on behalf of the United States. With me is Gery Graham
8 of Alcohol, Tobacco & Firearms.

9 THE COURT: Good morning.

09:16AM 10 MR. GRAHAM: Good morning.

11 MR. FUJIOKA: Good morning, Your Honor. Stuart
12 Fujioka appearing with defendant Joshua Knepper.

13 THE COURT: Okay. Good morning. And the record
14 should reflect Mr. Knepper is present.

09:16AM 15 Okay. Are we ready to proceed?

16 MS. SHEEHAN: Yes, we are, Your Honor. The government
17 calls Mr. Matthew Souza.

18 THE COURT: How many witnesses are you going to have
19 today, Ms. --

09:16AM 20 MS. SHEEHAN: Two.

21 THE COURT: Two? Mr. Fujioka, do you plan to have any
22 witnesses?

23 MR. FUJIOKA: One.

24 THE COURT: One? Okay.

09:16AM 25 MATTHEW SOUZA,

1 called as a witness by the Government, having been first duly
2 sworn, was examined and testified as follows:

3 COURTROOM MANAGER: Please be seated. Please state
4 your name and spell your last name.

09:17AM 5 THE WITNESS: My name is Matthew J. Souza. Last name
6 is S-O-U-Z-A.

7 DIRECT EXAMINATION

8 BY MS. SHEEHAN:

9 Q And where do you live, sir?

09:17AM 10 A 3042-A Liholani Street in Pukalani, Hawaii.

11 Q And what do you do for a living?

12 A I'm an -- own an auto repair shop.

13 Q Do you know someone named Joshua Knepper?

14 A Yes, I do.

09:17AM 15 Q If you were to see him again, would you recognize him?

16 A Yes, I would.

17 Q If he's in the courtroom, could you point him out for us,
18 please?

19 A Yeah, he's right over there in the blue shirt.

09:17AM 20 MS. SHEEHAN: May the record reflect identification of
21 the defendant?

22 THE COURT: Yes.

23 Q (BY MS. SHEEHAN) Now, for about how long have you known
24 Joshua Knepper?

09:17AM 25 A For about four or five years.

1 A Early February.

2 Q Of what year?

3 A 2005.

4 Q Okay. Well, let me draw your attention to January 13th of
09:26AM 5 2005, okay? What occurred on that date or on or about that
6 date?

7 A January 13th?

8 Q Yeah.

9 A Josh had agreed to be out of my house.

09:27AM 10 Q How do you know that?

11 A Basically between me, Josh and my ex-wife, Jessica Souza,
12 that's kind of what -- the agreement that we had kind of
13 mediated.

14 Q Was there a paper signed to that effect that he was going
09:27AM 15 to -- he promised to be out by January 13, 2005?

16 A He did, indeed, sign a small piece of paper and -- saying
17 that he would be out on that date and whatnot.

18 Q Do you have that small piece of paper?

19 A No, I do not.

09:27AM 20 Q Do you know what happened to it?

21 A No, I don't.

22 Q Now, did you go back to your cottage after January 13th of
23 2005?

24 A Yes, I went there several times after the 13th getting it
09:27AM 25 ready -- cleaning up and getting it ready to paint and whatnot.

1 THE WITNESS: You're welcome.

2 THE COURT: Mr. Fujioka, anything else?

3 FURTHER CROSS-EXAMINATION

4 BY MR. FUJIOKA:

10:00AM 5 Q Do you recall what happened to the car after the police
6 report was made?

7 A After -- after the police report was made, Josh -- well,
8 the car was under Josh's name at that time because he
9 transferred it to his name after I brought it to my shop. So,
10:00AM 10 he removed the vehicle; and then I think he abandoned it on the
11 road.

12 Q But on January 17 it was given back to Josh, correct?

13 A It took him a couple days for him to tow the car out of
14 there. It was kind of in the front of my shop area.

10:00AM 15 Q Okay. I take it you weren't present when he took the
16 car -- retrieved the car from the police?

17 A I was not present, no, I wasn't.

18 MR. FUJIOKA: Okay. Thank you.

19 THE WITNESS: You're welcome.

10:01AM 20 THE COURT: Thank you. You're excused.

21 THE WITNESS: Thank you.

22 MS. SHEEHAN: The Government calls Sergeant Doralyn
23 Poepoe.

24 SERGEANT DORALYN POEPOE,

10:01AM 25 called as a witness by the Government, having been first duly

1 sworn, was examined and testified as follows:

2 COURTROOM MANAGER: Please be seated. Please state
3 your name and spell your last name.

4 THE WITNESS: Doralyn Poepoe.

10:02AM 5 COURTROOM MANAGER: You can come further in front.

6 THE WITNESS: Doralyn Poepoe, P-O-E-P-O-E.

7 DIRECT EXAMINATION

8 BY MS. SHEEHAN:

9 Q And what do you do for a living?

10:02AM 10 A I'm a sergeant for the Maui Police Department.

11 Q Were you so employed on January 23rd, 2005?

12 A Yes.

13 Q On that day in the morning did you respond to a call?

14 A Yes.

10:02AM 15 Q And where did you go in response to the call?

16 A I went to 3042-A Liholani Street in Pukalani.

17 Q When you arrived at 3042-A Liholani Street in Pukalani,
18 what did you find?

19 A Basically I was met by a male party by the name of Matthew

10:03AM 20 Souza on the roadway.

21 Q And what was the complaint?

22 A Basically the complaint was that he had an ex-roommate
23 that he had -- that had been evicted that was still within the
24 residence.

10:03AM 25 Q Okay. Did you see a home, a residence?

1 photos -- took the photos first. And then I took the backpack
2 to Officer Won who had Knepper, and Officer Won attempted to
3 obtain a consent to search from Josh.

4 Q Did you later get a warrant for the backpack?

10:11AM 5 A Correct.

6 Q Okay. Did it appear to you that Matthew Souza had
7 authority to allow you to come in and look around the cottage
8 on January 23rd, 2005?

9 A Yes.

10:11AM 10 Q And why do you say that?

11 A Basically he had keys to the residence, and he claimed
12 that he was the renter of that residence.

13 MS. SHEEHAN: Okay. Thank you. I have nothing
14 further.

10:11AM 15 THE COURT: Cross?

16 MR. FUJIOKA: Thank you.

17 CROSS-EXAMINATION

18 BY MR. FUJIOKA:

19 Q Sergeant, did you review anything before testifying today?

10:11AM 20 A I reviewed my police report.

21 Q Anything else?

22 A My police report.

23 Q Your report show you -- you arrived about 10 minutes --
24 10, 11 minutes after 9:00 o'clock. Does that sound about

10:12AM 25 right?

1 A Yes, sir.

2 Q Were you the first officer on the scene?

3 A Yes, sir.

4 Q How long after being dispatched did you get there?

10:12AM 5 A I'm not sure of the exact dispatch time. If the assigned
6 time was at 9:11 and I -- I arrived at 9:13.

7 Q Just a couple of minutes then?

8 A Yes, sir.

9 Q And generally you would get a dispatch call shortly after
10:12AM 10 the report is made or after 911 is called?

11 A Depending on the availability of the officers is the
12 amount of time that lapsed before the assignment and the call
13 is received.

14 Q When you got to 3042-A Liholani Street, you met Matthew
10:13AM 15 Souza in or around -- near the street, correct?

16 A Correct.

17 Q And he told you that his ex-roommate was in the unit?

18 A Correct.

19 Q Did he give you any other information at that time?

10:13AM 20 A Basically he said that his ex-roommate was within the
21 residence and that there was some drug activity going on.

22 Q You know, your report contains information about Souza's
23 trying -- having an eviction notice printed and so on. Did
24 that come -- were you given that information when you first
10:14AM 25 arrived or did that come later?

1 A That information was obtained later.

2 Q So, as soon as you heard that there was ex-roommate and
3 drug activity, you were planning to enter the unit?

4 A Well, basically when I first got there, he said that his
10:14AM 5 ex-roommate was in there and that he had no authorization to be
6 there and he wanted to go in and check to make sure there
7 wasn't any further drug activity because he had observed it
8 earlier prior to police getting there. That's the reason why
9 he called.

10:14AM 10 Q But before you could enter, you heard the glass breaking?

11 A Basically prior to me approaching, the door was ajar. As
12 we were getting closer and I was obtaining information from
13 Mr. Souza as far as how many entry and exits there were within
14 the residence, the door had closed. And we made -- made a

10:14AM 15 check. The door was locked. And we heard the glass breakage
16 as he was trying to find the keys to open up the residence.

17 Q Did you know Joshua Knepper before January 23rd, 2005?

18 A I'm not sure if I had any encounters with him or not.

19 Q If you did, you don't remember?

10:15AM 20 A Not -- not prior to that.

21 Q What about Matthew Souza? Did you know him from before
22 January 23?

23 A I don't believe so.

24 Q So, when you heard the glass break, you went to -- you
10:15AM 25 went around back to see what was happening; is that right?

1 your report?

2 A Yes.

3 Q Who was the first to see that bag in the bedroom?

4 A I'm not sure if it was Souza or myself, both at the same
10:27AM 5 time.

6 Q Was it open or closed?

7 A The backpack?

8 Q Yes.

9 A Closed.

10:28AM 10 Q Did you speak with Mr. Knepper at all during the incident
11 of January 23rd, 2005?

12 A I don't believe I obtained any -- I know I didn't obtain
13 any statements from him.

14 Q Did you ask him any questions at the scene about whether
10:28AM 15 he was or was not living at 3042-A Liholani Street?

16 A I didn't obtain any statements from him.

17 Q Did you check any of his identification documents to see
18 what address he was claiming?

19 A Officer Miles Won had contact with Mr. Knepper.

10:29AM 20 Q And did you make it known to Mr. -- Officer Won that this
21 was a trespass-type case?

22 A Basically he was the original officer assigned to the
23 trespass case on Liholani Street.

24 Q And did -- at the scene did Won provide you any
10:29AM 25 information about Mr. Knepper's address?

1 A No.

2 MR. FUJIOKA: Okay. Thank you.

3 MS. SHEEHAN: Nothing further, Your Honor.

4 THE COURT: Let me ask one question. When you got to

10:29AM 5 the back of the house and you said you saw Mr. Knepper coming
6 out the window, how far out the window was he? In other words,
7 physically where was he at the time you first saw him?

8 THE WITNESS: He was more than three-quarters way out
9 already.

10:29AM 10 THE COURT: Anything else from anyone based on that?

11 MS. SHEEHAN: No, Your Honor.

12 MR. FUJIOKA: No.

13 THE COURT: Thank you. You may step down.

14 MS. SHEEHAN: Your Honor, that's the Government's
10:30AM 15 evidence.

16 THE COURT: All right. I suggest we take about a
17 five-to-ten-minute recess right now so we can all -- you can
18 prepare -- Mr. Fujioka get ready and the court reporter can
19 take a little break, okay? So, we're in recess.

10:30AM 20 (Recess at 10:30 a.m., until 10:39 a.m.)

21 MR. FUJIOKA: Your Honor, we call Jessica Souza.

22 THE COURT: Jessica Souza?

23 JESSICA SOUZA,

24 called as a witness by the Defendant, having been first duly

10:40AM 25 sworn, was examined and testified as follows:

1 COURTROOM MANAGER: Please be seated. Please state
2 your name and spell your last name.

3 THE WITNESS: Jessica Souza, S-O-U-Z-A.

4 DIRECT EXAMINATION

10:40AM 5 BY MR. FUJIOKA:

6 Q Ms. Souza, do you know a person named Joshua Knepper?

7 A Yes.

8 Q How do you know him?

9 A Excuse me?

10:40AM 10 Q How do you know him?

11 A I met him through a girlfriend of mine, Heather Schnore.

12 Q And he's a friend of yours?

13 A Yes.

14 Q How long have you known him?

10:41AM 15 A About four years now.

16 Q Do you know a person named Matthew Souza?

17 A Yes.

18 Q How do you know him?

19 A He is my ex-husband. We were married in December of 2000.

10:41AM 20 Q And when were you divorced?

21 A It would have been an Easter about two years later. I'm
22 not sure of the date.

23 Q Probably spring of '02?

24 A Sounds right.

10:41AM 25 Q How would you describe your relationship with Matthew

1 document agreeing to move out of the 3042-A Liholani Street
2 property?

3 A No.

4 Q Were you ever informed that Josh had to move out
10:46AM 5 January 13, 2005?

6 A Not of that specifically. I know that -- that Matt and
7 Josh had talked about Josh moving out. I don't know what date
8 or time, and I don't know if he ever did.

9 MR. FUJIOKA: Okay. May I approach the witness, Your
10:46AM 10 Honor?

11 THE COURT: Yes.

12 Q (BY MR. FUJIOKA) I'm going to show you what's in evidence
13 as Exhibit 1.

14 Let me back up. You're familiar with this Liholani
10:47AM 15 property, correct?

16 A Yes.

17 Q You used to live there?

18 A I used to live there.

19 Q Exhibit 1 is in evidence. They're some photographs taken
10:47AM 20 on the date of the arrest.

21 THE COURT: Mr. Fujioka, I think the court reporter
22 can't really hear you from where you are.

23 Q (BY MR. FUJIOKA) Do you recognize the fan in Photo No. 1?

24 A Yes.

10:47AM 25 Q Whose fan is that?

1 A I believe that's Josh's.

2 Q Do you recognize the dresser drawers in No. 1?

3 A Yes.

4 Q Do you know whose drawers those are?

10:47AM 5 A Those were from a dresser that I had left at the house;
6 and when Josh moved in, I gave that to him.

7 Q The bed, do you recognize the mattress?

8 A Yes, that was a bed that Josh used to sleep on.

9 Q Do you know whose it is?

10:47AM 10 A I sure hope it's Josh's. I mean, I don't know whose bed
11 he was sleeping on.

12 Q You don't know who the owner is?

13 A I don't know who purchased the bed, no.

14 Q Okay. Did you go into the -- have you ever been inside of
10:48AM 15 that 3042 Liholani Street property while Josh was living there?

16 A Yes.

17 Q And do you know whether -- or had you been there while
18 Matt was -- Matt and Josh were both there?

19 A I had been there when Matt wasn't sleeping there but Josh
10:49AM 20 was.

21 Q Do you recall whether Matt was able to go into Josh's
22 bedroom any time he wanted to?

23 A No. Josh -- that was -- Josh really valued his privacy,
24 and Matt knew that it was off-limits.

10:49AM 25 Q So, Matt wouldn't just go into Josh's room whenever he

1 COURT REPORTER'S CERTIFICATE

2 I, Sharon Ross, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that the foregoing is a correct transcript from the record of
5 proceedings in the above-entitled matter.

6 DATED at Honolulu, Hawaii, November 8th, 2005.

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Sharon Ross

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SHARON ROSS

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CSR 432, RPR, CRR

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